IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.532 OF 1999

IN

NOTICE OF MOTION NO.624 OF 1998

IN

SUIT NO.4282 OF 1997

The Mahanagar Telephone Nigam Ltd. ...Appellant.

vs.

1.Shri.Belgi Charuhas Arun & another ...Respondents.

Mr.V.D.Shukla i/b. M/s.Shukla & Associates, for Appellant.

None for Respondents.

CORAM: D.K.DESHMUKH &
J.H.BHATIA, JJ.

DATED: 3rd July,2007.

P.C.:-

1. By this appeal, the original plaintiff challenges the order dated 23.9.1998 passed in the notice of motion no.624 of 1998. By that order the Receiver appointed by the ad-interim order has been discharged. The plaintiff-MTNL has filed the suit against the respondent no.1 for recovery of the dues. In that suit, a notice of motion was taken out for attachment before judgment. In that notice of motion, a statement was made on behalf of the respondent no.1 that he has no intention to dispose of the suit flat. Therefore, an order of temporary injunction was made against him restraining him from disposing of the property. However, it appears that in breach of that order, he created third party interest in the property. Therefore, a notice of motion was taken out for appointment of Receiver.

The Court by order dated 16.2.1998 appointed Receiver on the property. When that notice of motion came up for final hearing, the learned Single Judge, noting only that because the suit is only for recovery of money it is not necessary to appoint the Receiver, has disposed of the notice of motion and has discharged the Receiver. It is submitted, in our opinion, rightly on behalf of the appellant that the learned Single Judge did not take into consideration the fact that the Court had appointed Receiver on the property because the respondent no.1, in breach of his undertaking given to the Court and in breach of the injunction order made by the Court, had created third party rights. By interim order passed in this appeal, the Receiver has been continued and presently, the property is under the Receiver. We are also informed that the defendant has not filed any written statement in the suit and the suit is also likely to appear before the Court for passing of exparte decree.

2. Taking overall view of the matter therefore, in our opinion, following order would meet the ends of justice:-

(i) The order dated 23.9.1998 passed in notice of motion no.624 of 1998 is set aside.

(ii) Ad-interim order dated 16.2.1998 passed in the notice of motion is confirmed. It will continue to operate during the pendency of the suit.

Appeal is disposed of.

(D.K.DESHMUKH, J.)

(J.H.BHATIA,J.)